

Application No. 10/089,364  
Amendment dated March 7, 2006  
Reply to Office Action of September 8, 2005

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### REMARKS/ARGUMENTS

Claims 1-4, 6-10, 26-31, 37-39, 41-43, and 50-51 are under examination with entry of this Amendment. Claims 5, 11-25, 32-36, 40, and 44-49 have been canceled without prejudice. Applicants note that claims 9-10 and 28-29 are considered to be allowable.

#### Claim Rejections:

#### New Matter:

Claims 1-4, 6-8, 26-27, 30-33, 37-39, 41-43, and 50-51 are rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Office Action states that the claims have been amended to recite "having at least 95% identity to SEQ ID NO:4" but Applicants fail to point to support for the phrase in the specification.

In response, Applicants point out that the response filed on June 16, 2005 specifically states that "[S]upport is found at page 47, lines 6-7, of the specification, where it is stated that there is about 95% amino acid sequence identity between PhyA-1 and PhyA-2 polypeptides" (see page 12, 2<sup>nd</sup> paragraph).

Applicants further submit that the recited phrase in claims 1 and 26, "at least 95% identity to SEQ ID NO:4" is fully supported by the as-filed specification. The invention claimed is a method of enhancing the phosphorus nutrition of a plant by expressing a phytase polypeptide and a transformed plant expressing such phytase polypeptide. The invention is exemplified by expressing two phytase polypeptides, PhyA-1 and PhyA-2 as detailed in the Examples, particularly Tables 5 and 6. The amino acid sequence of the PhyA-1 polypeptide is set out in SEQ ID NO: 4 (see page 48, lines 10-11) and the amino acid sequence of the PhyA-2 polypeptide is set forth in SEQ ID NO:2 (see page 47, lines 9-10). The sequence identity between the PhyA-1 and PhyA-2 polypeptides is

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about 95% at the amino acid level, as pointed out in the specification on page 47, lines 6-7. Accordingly, the PhyA-2 polypeptide is clearly an example of the peptide "having at least 95% identity to SEQ ID NO:4". Applicants maintain that the invention is sufficiently described in the specification to convey to those skilled in the art that the inventors had possession of the claimed invention when the application was filed.

Based on the foregoing, Applicants respectfully request withdrawal of the claim rejection under 35 U.S.C. 112, first paragraph.

Scope of enablement:

Claims 32-33 are rejected under 35 U.S.C. 112, first paragraph, as the specification allegedly does not enable any person skilled in the art to make and use the invention commensurate in scope with these claims.

Without acquiescing to this rejection and in the interest of advancing prosecution of this case, claims 32-33 have been canceled without prejudice.

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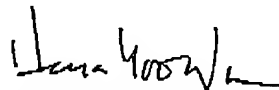
Conclusion:

In view of the foregoing, it is submitted that this case is in condition for allowance, and passage to issuance is respectfully requested.

If there are further issues related to patentability, the courtesy of a telephone interview is requested, and the Examiner is invited to call to arrange a mutually convenient time.

This amendment is accompanied by a Petition for Extension of Time (3 months) and a Notice of Appeal, both of which include authorization to charge the requisite fees to deposit account 07-1969. It is believed that this amendment does not necessitate the payment of any additional fees under 37 C.F.R. 1.16-1.17.

Respectfully submitted,



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